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## NOTICE OF ALLOWANCE AND FEE(S) DUE

39207

7590

09/18/2008

DARBY & DARBY (formerly Sacco & Associates)  
P.O. BOX 770  
CHURCH STREET STATION  
NEW YORK, NY 10008-0770

EXAMINER

KATCHEVETS, BASIL S

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 09/18/2008

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,909	12/11/2003	Robert J. Wilson	0207955-USO	8476

TITLE OF INVENTION: BREAK-AWAY CONCRETE FORM STAKE WITH SELF-SEALING FEATURE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$720	\$300	\$0	\$1020	12/18/2008

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE** OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

## HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issued on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to:** **Mail** **Mail Stop ISSUE FEE**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, Virginia 22313-1450**  
**or Fax** **(571)-273-2885**

**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

39207 7590 09/18/2008

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**CHURCH STREET STATION**  
**NEW YORK, NY 10008-0770**

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10733,909 12/11/2003

Robert J. Wilson

0207955-US0

8476

**TITLE OF INVENTION: BREAK-AWAY CONCRETE FORM STAKE WITH SELF-SEALING FEATURE**

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$720	\$300	\$0	\$1020	12/18/2008

EXAMINER	ART UNIT	CLASS-SUBCLASS
KATCHEVES, BASIL S	3635	052-677000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.  
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a **Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_  
 (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_  
 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

**PLEASE NOTE:** Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee  
☐ Publication Fee (No small entity discount permitted)  
☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.  
☐ Payment by credit card. Form PTO-2038 is attached.  
☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

**NOTE:** The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Typed or printed name \_\_\_\_\_ Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.**

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10/733,909	12/11/2003	Robert J. Wilson	0207955-USO	8476
39207	7590	09/18/2008	EXAMINER	
DARBY & DARBY (formerly Sacco & Associates) P.O. BOX 770 CHURCH STREET STATION NEW YORK, NY 10008-0770			KATCHEVES, BASIL S	
			ART UNIT	PAPER NUMBER
			3635	
DATE MAILED: 09/18/2008				

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 935 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 935 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

# Notice of Allowability

## Application No.

10/733,909

## Examiner

BASIL KATCHEVES

## Applicant(s)

WILSON ET AL.

## Art Unit

3635

### - The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/10/08.
2. ☒ The allowed claim(s) is/are 29-33, 37-39 and 42-46.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

/Basil Katcheves/  
Primary Examiner, Art Unit 3635

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Sacco on 9/10/08.

The application has been amended as follows:

#### **To the specification dated 12/11/03:**

**Please amend paragraph [0023] of the specification as follows:**

**[0023]** Fig. 1A is a cross-sectional view of a portion of a typical building site 100 that has been prepared for the pouring of a concrete foundation. The building site includes a moisture barrier membrane 102 disposed over compacted soil 104, and a slab form 106 that will serve to contain a poured concrete slab until such times as it cures. Additional slab forms are conventionally disposed around a perimeter of the building site to constrain the wet concrete and define any necessary details in the foundation. For example, a form 108 can be used to create a depression in the slab for receiving a wood or metal structural member. Structural reinforcements 112 are typically provided along portions of the slab where heavy loading is anticipated. Rigid metal stakes, such as stake 110 are commonly used to hold the position of the various forms 106, 108 while the concrete is allowed to cure. As shown in FIG. 1A, a fastening device 114 is used to secure the form 108 to the stake 110. The fastening device 114 conventionally used in such prior art arrangements is usually a screw or a nail that passes through a bore provided in the stake 110. The fastening device secures the

stake 110 to the form 108 while the slab is poured and the concrete begins to cure. Before the concrete is fully cured, the stake can be removed as shown in Fig. 1B and the surface of the concrete can be smoothed over to close any opening in the still uncured concrete that may be left behind by the now removed stake 110. Still, the removal of the stake 110 will leave an opening 118 in the moisture barrier membrane 102 that can allow moisture and insects direct access to the slab. This is highly undesirable.

**Claim 29:**

**Please amend claim 29 as follows:**

Apparatus for securing a foundation form disposed on a moisture barrier membrane comprising:

a stake comprised of an elongated body extending along a defined axis and formed of a rigid material, said stake extends from a head forming a first end of an upper portion of said elongated body to a tapered tip forming an opposing second end of a lower portion of said elongated body;

a sealing member disposed at a location along a length of said stake forming a seal around a periphery of said stake at said location and extending radially away from said axis; and

wherein said upper portion comprises a frangible section separable from a remainder of said elongated body at a location defined by at least one break-point where said elongated body is includes a modified section which is configured to provide a reduced shear strength as compared to a remainder of said elongated body, said modified section comprised of a bore formed in said elongated body transverse to said axis, and a scored portion on the outer surface of said elongated body aligned with said bore which further reduces a cross-sectional area of said elongated body at said break point.

**Claim 39:**

**Please amend claim 39 as follows:**

A disposable stake for a foundation form comprising:

a stake comprised of an elongated body extending along a defined axis and formed of a rigid material, said stake extends from a head forming a first end of an upper portion of said elongated body to a tapered tip forming an opposing second end of a lower portion of said elongated body;

a sealing member disposed at a location along a length of said stake forming a seal around a periphery of said stake at said location and extending radially away from said axis, a sealant disposed on a surface of said sealing member nearest said tapered tip, and a non-stick tape disposed on said sealant;

wherein said upper portion comprises a frangible section separable from a remainder of said elongated body at a location defined by at least one break-point where said elongated body is modified to provide a reduced shear strength as compared to a remainder of said elongated body, said break point comprising a structural modification of said elongated body selected from the group consisting of a scored portion, a hollowed portion, and a bore formed transverse to a length of said stake.

**Claims 42-46:**

**Please amend claims 42-46 as follows:**

In line 1, delete [41] and replace with 39

**Claims 34-36, 40, 41 and 47-51:**

**Please delete claims 34-36, 40, 41 and 47-51**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BASIL KATCHEVES whose telephone number is (571)272-6846. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Basil Katcheves/  
Primary Examiner, Art Unit 3635